COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

John K, Welch
Judge

November 16, 2011

Mr. Yuri Ciabattoni
124 Wyeth Way
Hockessin, DE 19707

Gerald Z. Berkowitz, Esquire
1218 Market Street
P.O. Box 1632
Wilmington, DE 19899-1632

Re: ***Yuri Ciabattoni v. Stapleford's of Wilmington, Inc.***
C.A. No. CPU4-11-000429

Date Submitted: November 3, 2011
Date Decided: November 16, 2011

LETTER OPINION

Dear Counsel:

Trial in the above captioned matter took place on Thursday, November 3, 2011 in the Court of Common Pleas, New Castle County, State of Delaware. This is an *appeal de novo* brought pursuant to 10 *Del. C.* § 9570 *et. seq.* from the Justice of the Peace Court. At the close of Plaintiff Yuri Ciabattoni's case, following the receipt of documentary evidence[1] and sworn

[1] The Court received into evidence the following items: Plaintiff's Exhibit #1 (work proposal by Stapleford's of Wilmington, Inc., submitted to [Yuri] Ciabattoni, dated June 23, 2010); Plaintiff's Exhibit #2 (photographs of two heating and air conditioning units, owned by Gordiano Fiasco and Yuri Ciabattoni, respectively); Plaintiff's Exhibit #3 (copies of three personal checks made out to "Stapleford's" and signed by Raffaela Ciabattoni: check #1321, dated June 22, 2010, for $2,400.00; check #1323, dated June 24, 2010, for $1,600.00; and check #1329, dated July 6, 2010, for $3,950.00); Plaintiff's Exhibit #4 (invoice from Stapleford's of Wilmington, Inc. to Yuri Ciabattoni describing work completed, warranty and total purchase price paid in full, dated July 9, 2010); Plaintiff's Exhibit #5 (photographs of a damaged pipe); Plaintiff's Exhibit #6 (tape recorded conversation between Yuri Ciabattoni and Stephanie Fuhr, dated August 23, 2010); Plaintiff's Exhibit #7 (photocopy of work proposal by Stapleford's of Wilmington, Inc., submitted to Gordiano Fiasco dated August 7, 2008); Plaintiff's Exhibit #8 (online description of Trane's XL15i Super Efficiency Air Conditioner, installed at the home of Gordiano Fiasco); Plaintiff's Exhibit #9 (online description of Trane's XR15 High Efficiency Air Conditioner, installed at the home of Yuri Ciabattoni); Plaintiff's Exhibit 10 (Stapleford's of Wilmington, Inc.'s Answers to Plaintiff's Request for Production and Interrogatories); Plaintiff's Exhibit #11 (*Ciabattoni v. Varriale*, C.A. No. J0610094412, Tull, J. (Del. J.P. Jan. 27, 2007)); Defendant's Exhibit #1 (another copy of the tape recorded conversation between Yuri Ciabattoni and

testimony, Defendant Stapleford's of Wilmington, Inc. moved for a Directed Verdict pursuant to *Court of Common Pleas Civ. R.* 50(a). The Court reserved decision. This is the Court's Final Decision and Order.

I. Procedural Posture

On January 4, 2011, the Justice of the Peace Court entered judgment for Stapleford's of Wilmington, Inc. ("Defendant"). On January 14, 2011, Yuri Ciabattoni ("Plaintiff") filed an appeal to this Court.

Plaintiff's Complaint on Appeal alleged that Plaintiff entered into a contract with Defendant to install a new heating and air conditioning unit at Plaintiff's home in July, 2010. The Complaint alleged that prior to entering into this written contract, the parties orally agreed that Defendant would install the same model air conditioner as Plaintiff's neighbor, Gordiano Fiasco ("Fiasco") had in his home, except that Plaintiff's unit was to be 4 tons instead of Fiasco's 3.5 ton unit. Plaintiff alleged that the model ultimately installed was materially different from the model installed in Fiasco's home. Specifically, Plaintiff alleged that the air conditioner installed in his home was a different model, did not have a two speed fan, did not have a closed top, and was a lower efficiency model.

On March 4, 2011, Defendant filed an Answer. Defendant admitted to installing a new heating and air conditioning unit at Plaintiff's home but denied the existence of any prior oral agreement between the parties. Simply put, Defendant argued that both parties fully performed as required under the written contract, and therefore, there has been no breach of contract.

Stephanie Fuhr dated August 23, 2010); and Defendant's Exhibit #2 (original work proposal by Stapleford's of Wilmington, Inc., submitted to Gordiano Fiasco, dated August 7, 2008).

II. The Facts

Defendant is a Delaware corporation and is a licensed HVAC contractor. Plaintiff approached Defendant because his air conditioner failed and he wished to purchase a new one. On June 23, 2010, the parties entered into a written contract wherein Defendant was to replace Plaintiff's existing heating and air conditioning units with a "new Trane model TTUH1C100A81A 100,000 BTU 95% eff. gas furnace with new Trane model T4TTR5048E1000A 4 ton 15 seer condensing unit with matching Trane model T4TXCC049BC3HCA coil" for $7,950.00.[2] The contract included an express warranty which provided that "[a]ll materials [are] guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for the above work and completed in a substantial and workmanlike manner[.]"[3] Plaintiff made a $4,000 down payment and paid the balance upon completion of the installation, which occurred on or about July 6, 2010.[4]

Plaintiff called his father, Corradino Ciabattoni (hereinafter, "Corradino"), as his first fact witness. Corradino testified that he was with Plaintiff at Plaintiff's home prior to the installation of the air conditioner. Corradino saw the unit that was to be installed and noticed it did not include a closed top. He asked Defendant about the missing top and Defendant informed him that the model with the closed top was no longer available. Corradino also testified that approximately one month after the installation of the air conditioner, Plaintiff discovered through an online search that the model he originally wanted was still available for purchase.

---

[2] Plaintiff's Exhibit #1.

[3] *Id.*

[4] The contract required a 50% down payment with the remaining balance to be paid upon completion of installation. The record does not indicate what day the installation was completed but Plaintiff's final payment of $3,950 was made by check #1329 on July 6, 2010. Defendant's invoice, dated July 14, 2010, indicates that the total amount due was paid in full on July 9, 2010.

Plaintiff then called Raffaela Ciabattoni (hereinafter, "Raffaela") as a witness. Raffaela is Plaintiff's wife. Raffaela testified that the parties orally agreed prior to entering into the written contract that Plaintiff would receive the same air conditioner as Fiasco. She explained that Plaintiff wanted a "top of the line" model which would include a closed top that operates to keep leaves and other debris out of the unit. Raffaela testified that the installed unit was not the same model as Fiasco's because there was no closed top. On cross-examination, Raffaela admitted that the unit works properly.

Finally, Plaintiff took the stand and testified in the narrative. He explained that his old air conditioner failed so he contacted Defendant to discuss installation of a new unit. Plaintiff testified that he asked for the same unit that Fiasco has, except he wanted a 4 ton unit instead of the 3.5 ton unit installed at Fiasco's home. Plaintiff stated that he was present on the day of installation but had to leave shortly after Defendant arrived in order to go to work. However, before he left, he saw the unit that was to be installed and noticed that it did not include a closed top. He testified that the reason he did not ask about the missing top was because he assumed there was a second part which would be installed later. Plaintiff then testified that approximately one week after the installation of the air conditioner, he called Defendant to discuss the fact that his unit did not include a closed top.

Plaintiff also presented evidence of damage to a pipe allegedly caused by Defendant during installation of the unit.[5] On cross-examination, Plaintiff admitted that Defendant had fully performed as required by the terms of the written contract.

[5] Plaintiff's Exhibit #5.

III. Discussion

At the close of Plaintiff's case-in-chief, Defendant moved for a Directed Verdict pursuant to Court of Common Pleas Civil Rule 50(a). The basis of the Motion was that Plaintiff had not established the necessary elements of a breach of contract. Specifically, Defendant argued that the written contract is clear and unambiguous and that Plaintiff failed to establish any contractual obligation on the part of Defendant outside those found in the written contract.

Court of Common Pleas Civil Rule 50(a) governs *Motions for Directed Verdict* and provides in pertinent part:

> A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. A motion for a directed verdict shall state the specific grounds therefor.

Further, in considering a motion for directed verdict the court must view the evidence in a light most favorable to the non-moving party.[6] When considering a directed verdict for the Defendant, the Court should be convinced that there is no substantial evidence to support a verdict for the Plaintiff.[7]

In a civil case, the plaintiff bears the burden to prove his claims by a preponderance of the evidence.[8] The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.[9]

In this case, Plaintiff's Complaint arguably pleads a cause of action for breach of contract. The elements of a breach of contract claim are: (1) a contractual obligation; (2) a

---

[6] *Rumble v. Lingo*, 147 A.2d 511 (Del. Super. 1958).
[7] *McCarthy v. Mayor of Wilmington*, 100 A.2d 739 (Del. Super. 1953). *See also, Wilson v. Klabe Const. Co.*, 2003 WL 22931390, Welch, J. (Del. Com. Pl. July 22, 2003).
[8] *Reynolds v. Reynolds*, 237 A.2d 708 (Del. 1967).
[9] *Id.*

breach of that obligation by the defendant; and (3) a resulting damage to the plaintiff.[10] The Complaint alleges, albeit inartfully, that a contract existed between the parties for the installation of an air conditioner in exchange for payment, that Defendant breached that contract by installing the wrong air conditioner and damaged a pipe during its installation, and as a result Defendant suffered damages because he received a lesser air conditioner than he bargained for and a pipe in his home was damaged.[11]

After review of the subject testimony and credibility of the evidence of trial, the Court finds that Defendant's Motion for a Directed Verdict must be granted because even viewing the evidence presented in a light most favorable to the Plaintiff, there is no substantial evidence supporting a verdict for the Plaintiff. Simply put, Plaintiff did not present sufficient evidence establishing that Defendant breached the contract, or that Plaintiff suffered damages as a result.

Plaintiff did not establish that Defendant breached the contract because Plaintiff admitted that Defendant fully performed as required by the written contract. Plaintiff testified that Defendant properly installed the same model air conditioner as specified in the written contract. Plaintiff's testimony indicated that he inspected the unit prior to its installation and noticed that it was different than the unit installed in Fiasco's home. Nonetheless, Plaintiff made full payment following inspection and installation. Plaintiff testified that the air conditioning unit installed in his home works perfectly. In other words, Plaintiff received the full benefit of the bargain.

Further, Plaintiff failed to present any evidence on damages. Plaintiff argued that he suffered damages in the amount of $7,950.00 as a result of Defendant's alleged breach. Plaintiff also presented photographs of a pipe allegedly damaged during installation of the air conditioner. However, the $7,950.00 figure represents the contract price. Plaintiff failed to present any

[10] *H-M Wexford, LLC v. Encorp, Inc.*, 832 A.2d 129 (Del. Ch. 2003).
[11] In construing the pleadings of *pro se* litigants, the Court may exhibit some degree of leniency in order to see that the case is fully and fairly heard. *Vick v. Haller*, 522 A.2d 865 (Del. 1986).

evidence regarding how he was damaged in the amount of $7,950.00 despite receiving an admittedly fully functioning new air conditioner. Further, Plaintiff presented no evidence as to the value of the allegedly damaged pipe, such as a receipt from a third party repairman indicating the value of the damage. Additionally, Plaintiff admitted that Defendant offered to repair the pipe, an offer which Plaintiff refused. Even assuming, *arguendo*, that Plaintiff did establish that the pre-contract oral terms were incorporated into the contract, and that Defendant breached the contract by failing to install the proper model air conditioner, Plaintiff wholly failed to present evidence on damages, a required element of his breach of contract claim.

Therefore, the Court is convinced that no substantial evidence was presented at trial to support a verdict for Plaintiff. As such, Defendant's Motion for a Directed Verdict is hereby **GRANTED**. Each party shall bear their own costs.[12]

IT IS SO ORDERED this 16th day of November, 2011.

John K. Welch
Judge

/jb

cc: Ms. Tamu White, Clerk of the Court
CCP, Division

[12] Prior to trial, Defendant filed a Motion to Compel production of the tape recorded conversation between Yuri Ciabattoni and Stephanie Fuhr (Plaintiff's Exhibit #6; Defendant's Exhibit #1). In that Motion, Defendant asked for counsel fees to be awarded for the costs incurred in filing the Motion. In its letter withdrawing the Motion, Defendant requested that the issue of counsel fees be consolidated with the hearing on November 3, 2011. Defendant failed to raise this issue at trial, so the request for counsel fees is moot.